

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-TP-15-30,657 & RH-TP-15-30,660

In re: 4849 Connecticut Ave., NW

Ward Three (3)

RALPH GENVARIO

Tenant/Appellant

v.

**TMG ELLICOTT, LP and
MILESTONE MANAGEMENT, LP**

Housing Providers/Appellees

ORDER GRANTING MOTION TO DISMISS

April 3, 2023

HUNTER, ADMINISTRATIVE JUDGE: This case is on appeal to the Rental Housing Commission (“Commission”) from a final order issued by the Office of Administrative Hearings (“OAH”),¹ based on a petition filed in the Rental Accommodations Division (“RAD”) of the Department of Housing and Community Development (“DHCD”). The applicable provisions of the Rental Housing Act of 1985 (“Act”), D.C. Law 6-10, D.C. Official Code §§ 42-3501.01 - 3509.07 (2012 Repl.), the District of Columbia Administrative Procedure Act (“DCAPA”), D.C. Official Code §§ 2-501-510 (2012 Repl.), and the District of Columbia Municipal Regulations

¹ OAH assumed jurisdiction over tenant petitions from the Rental Accommodations and Conversion Division (“RACD”) of the Department of Consumer and Regulatory Affairs (“DCRA”) pursuant to the OAH Establishment Act, D.C. OFFICIAL CODE§ 2-1831.01 -1831.03(b-1)(1) (2007 Repl.). The functions and duties of RACD were transferred to DHCD by§ 2003 of the Rental Housing Operations Transfer Amendment Act of 2007, D.C. Law 17-20, D.C. OFFICIAL CODE§ 42-3502.04B (2010 Repl.).

(“DCMR”), 1 DCMR §§ 2800-2899 (2016), 1 DCMR §§ 2920-2941 (2016), and 14 DCMR §§ 3800-4399 (2004),² govern these proceedings.

I. PROCEDURAL HISTORY

On November 2, 2016,³ tenant/appellant Ralph Genvario (“Tenant”) filed a notice of appeal with the Commission (“Notice of Appeal”) from a final order issued by OAH: Genvario v. Ellicott House, RH-TP-15-30,657 & RH-TP-15-30,660 (OAH Oct. 25, 2016); Record of RH-TP-15-30,657 (“R.”) at Tab 23. On October 2, 2017, housing providers/appellees TMG Ellicott, LP and Milestone Management, LP (jointly, “Housing Provider”) filed a motion to dismiss the appeal as untimely, which was subsequently denied on August 9, 2018.

On February 27, 2023, the Commission issued a Notice of Scheduled Virtual Hearing stating that the hearing on the Tenant’s appeal would occur at 11:00 a.m., Thursday, February 23, 2023 via WebEx. As indicated in the certificate of service, the Commission served the Notice of Scheduled Virtual Hearing on the Tenant via the United States Postal Service and the Housing Provider via electronic mail. The Tenant did not provide the Commission or the Clerk with an electronic mailing address, and no change of address was ever filed for the tenant after the Notice of Appeal was filed. However, the Notice of Scheduled Virtual Hearing was returned marked “undeliverable” on March 6, 2023. The Commission also attempted to contact the Tenant telephonically on or about January 18, 2023, via the number on file and the number was disconnected. Again, the Tenant did not provide the Commission with an updated phone number.

² On December 31, 2021, new rules took effect to amend the applicable chapters of Title 14 of the DCMR. Pursuant to 14 DCMR § 3800.10 (2021), the Commission applies the prior rules to the facts of this case and to its procedures on appeal.

³ Notice of Appeal was dated and signed on October 31, 2016, however, the Commission received and date-stamped the appeal on November 2, 2016.

On February 23, 2023, Richard Luchs, Esq. counsel for the Housing Provider, appeared for the hearing at the time designated in the Notice of Scheduled Virtual Hearing. The Tenant did not appear. At approximately 11:15 a.m., the Commission convened the hearing, and Attorney Luchs made an oral motion to dismiss the Tenant's Notice of Appeal with prejudice.

II. DISCUSSION

The Commission has long held that an appellant's failure to appear at the Commission's scheduled hearing is grounds for dismissal of an appeal. Stancil v. D.C. Rental Hous. Comm'n, 806 A.2d 622, 622-25 (D.C. 2002); *see also* Hardy v. Sigalas, RH-TP-09-29,503 (RHC July 21, 2014) (dismissing tenant's cross-appeal where tenant failed to appear at the Commission's hearing); Carter v. Paget, RH-TP-09-29,517 (RHC Dec. 11, 2013) (dismissing appeal where appellant failed to appear at the Commission's hearing); Wilson v. KMG Mgmt. LLC, RH-TP-11-30,087 (RHC May 24, 2013) (dismissing the tenant's notice of appeal where she failed to appear at the Commission's hearing). The District of Columbia Court of Appeals ("DCCA") held in Stancil that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled Commission hearing. Stancil, 806 A.2d at 622-25. The DCCA recognized that, although the Commission does not have a specific regulation that prescribes dismissal when a party fails to appear, the Commission's regulations at 14 DCMR § 3828.1⁴ empowers the Commission to rely on the DCCA's rules when its rules are silent on a matter before the Commission. Stancil, 806 A.2d at 622-25. The DCCA noted that D.C. App. R. 14 permits dismissal of an appeal "for failure to comply with these rules or for any other lawful reason," and

⁴ 14 DCMR § 3828.1 provides the following:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

that D.C. App. R. 13 “authorizes an appellee to file a motion to dismiss whenever an applicant fails to take the necessary steps to comply with the court’s procedural rules.” Stancil, 806 A.2d at 625. The DCCA concluded that “both [DCCA] Rule 13 and Rule 14 support the proposition that dismissal is an appropriate sanction when an appellant is not diligent about prosecuting his appeal.” *Id*; *see also* Radwan v. D.C. Rental Hous. Comm’n, 683 A.2d 478, 480 (D.C. 1996) (favoring the Commission’s adoption of other court rules absent a regulation specifically governing the Commission’s discretion).

The Commission is satisfied that it gave the Tenant proper notice of the virtual hearing. The Notice of Scheduled Virtual Hearing warned the parties that failure to appear may result in the dismissal of the appeal. *See* Notice of Scheduled Virtual Hearing. Furthermore, the notice of the hearing was returned as undeliverable. The Commission has ruled that “[i]t is incumbent upon a party to provide the Commission with notice of a change of address.” Hardy v. Sigalas, RH-TP-09-29,503 (RHC Aug. 7, 2014) (Order on Motion for Reconsideration); Brookens v. Hagner Mgmt. Corp., TP 3788 (RHC July 2, 2002). The Tenant had not provided the Commission with a new address prior to the February 27, 2023 noticed hearing and the notice was mailed to the last known address. Therefore, there was proper service on the Appellant. Nonetheless, the Tenant failed to appear at the rescheduled hearing or otherwise provide the Commission with new contact information at any time.

III. CONCLUSION

Accordingly, the Housing Provider’s motion to dismiss is granted and the Tenant’s Notice of Appeal is dismissed.

SO ORDERED.

DocuSigned by:

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ADAM R. HUNTER, ADMINISTRATIVE JUDGE

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

JUDICIAL REVIEW

Pursuant to D.C. Official Code § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission . . . may seek judicial review of the decision . . . by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700


CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER GRANTING MOTION TO DISMISS** in RH-TP-15-30,657 & RH-TP-15-30,660 was mailed, postage prepaid, by first class U.S. mail and electronically mailed on this **3rd day of April 2023** to:

Copies to:

Ralph Genvario
4849 Connecticut Avenue, N.W.
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Washington, DC 20008

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